



M O N T A N A  
C O A L I T I O N   A G A I N S T  
D O M E S T I C   A N D   S E X U A L  
V I O L E N C E

To: Senate Judiciary Committee  
From: Kelsen Young, Executive Director  
Re: SB 327 – Protection for Mothers-to-be Act  
Date: February 13<sup>th</sup>, 2009

SENATE JUDICIARY

EXHIBIT NO. 8

DATE 2/18/09

FILE NO SB327

Good morning, Mr. Chairman and Members of the Senate Judiciary Committee. For the record, my name is Kelsen Young and I am the Executive Director of the Montana Coalition Against Domestic and Sexual Violence. We are a statewide membership organization representing direct service programs from across the state that provide services to victims of domestic and sexual violence. We rise in opposition to SB 327 sponsored by Senator Curtiss. We agree with the previous testimony from other opponents regarding the implications and problems with this proposal.

In past sessions, we have supported proposals such as that of Representative John Parker's HB 585 in 2005 or Representative Penny Morgan's HB 494 in 2007. Both of these proposals would have created increased penalties for felony assault against a pregnant woman. In these proposals, the focus was on the assault against the pregnant woman. SB 327 focuses on violence against the "unborn child" and attempts to define and enshrine in our criminal code the term "unborn child". In addition, HB 585 acknowledged that the assailant had to have knowledge of the pregnancy. SB 327 does not include the same type of language regarding intent or knowledge of the pregnancy. In addition, HB 585 actually had more serious penalties for the assault charge – it was considered a felony.

There are a few technical concerns with SB 327 that I wanted to point out as well. The aggravated assault section, page 2 line 21, establishes a sentence of "not less than 2 years or more than 20 years". The current general aggravated assault section, 45-5-202, currently reads "for a term not to exceed 20 years" as was amended by this Committee in 2007. Therefore, in this section alone, this proposal has a different sentencing penalty for aggravated assault towards the "unborn child" that is significantly different from all other aggravated assault situations. I believe this type of inconsistency with current law exists throughout SB 327.

Also, I was struck by the fiscal note for SB 327 and the lack of fiscal consequence this proposal *supposedly* has for the State. In 2007, when Representative Morgan introduced HB 494 (as explained above) the fiscal impact to the state was significant. In 2005, Representative Parker's HB 585 also was given a hefty fiscal note. Yet, in 2005 Representative Morgan introduced HB 231 which was identical to SB 327 – both of the fiscal notes for these two bills indicate NO significant impact to the State. (I have distributed the fiscal note from 2005 for the Committee's reference) This seems like a lack of attention, a major oversight, or a political maneuver. Why is it that when we attempt statute changes that address violence against women, we always encounter fears of such a significant fiscal impact – which is often why proposals to further protect women do not pass – and conveniently when we are looking at other types of crimes, and in this case violence against the "unborn child", there is no fiscal impact?? This is incredibly frustrating to those of us working to increase our criminal justice system's response to violence against women.

Fundamentally, we at MCADSV are deeply concerned about violence against pregnant women. Studies show that 1 in 12 pregnant women are battered by their partner; homicide is the second leading cause of traumatic death for pregnant and recently pregnant women in the U.S., accounting for 31 percent of maternal injury deaths; and children born to abused mothers are 17 percent more likely to be born underweight and more than 30 percent more likely than other children to require intensive care upon birth. This is a serious problem and one we are committed to addressing. SB 327 does not appropriately or adequately address the issue of violence towards pregnant women who are in *intimate partner* violent relationships. This bill does not address the injury to the woman as the root of the injury to the fetus.

Please oppose SB 327. Thank you for your time and I'm happy to answer any questions.

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